

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LUZ M VALEDON

Claimant

APPEAL NO. 09A-UI-04125-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

Original Claim: 06/22/08

Claimant: Appellant (2)

Iowa Code section 96.5(1)(d) – Voluntary Quit

STATEMENT OF THE CASE:

Luz Valedon filed a timely appeal from the March 5, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on April 10, 2009. Ms. Valedon participated. Will Sager, Complex Human Resources Manager, represented the employer. Spanish-English interpreter Angela Arellano assisted with the hearing.

ISSUE:

Whether the claimant's voluntary quit was for good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Luz Valedon is a non-English speaking person whose native language is Spanish. Luz Valedon was employed by Tyson Fresh Meats as a full-time production worker on the kill floor from August 26, 2008 and last performed work for the employer on January 26, 2009. Ms. Valedon is 59 years old and suffers from diabetes. During the course of her employment, Ms. Valedon began to experience pain her hands related to the repetitive movement involved in the employment. The pain began in one hand. Ms. Valedon sought assistance from the company nurse, who provided ibuprofen and ice, and who directed Ms. Valedon's supervisor to give her more frequent breaks. The pain in that hand continued and Ms. Valedon began to experience pain in her other hand. Ms. Valedon had repeated contact with the company nurse and continued on an increased break schedule. The pain in Ms. Valedon's hands made it difficult for her to function at work and outside of work. The employer did not have Ms. Valedon evaluated by a medical professional. In November 2008, Ms. Valedon saw her own doctor. Ms. Valedon's doctor told Ms. Valedon the employment was damaging her hands and recommended that she leave the employment. Ms. Valedon's doctor repeated this message on subsequent visits up to the end of the employment.

During the two weeks preceding January 26, 2009, Ms. Valedon was off work on an approved medical leave of absence. Ms. Valedon had also been suffering from a non-work-related intestinal ailment. The leave was prompted by Ms. Valedon's multiple health issues. When Ms. Valedon returned to work on January 26, the supervisor would not allow her to continue

under the previously instituted increased break schedule. Ms. Valedon was in discomfort during the shift. Ms. Valedon concluded that she could not continue in the employment and did not return for subsequent shifts. Ms. Valedon returned only to collect her final paycheck.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Workforce Development rule 817 IAC 24.26(6)(b) provides as follows:

Separation because of illness, injury, or pregnancy.

b. Employment related separation. The claimant was compelled to leave employment because of an illness, injury, or allergy condition that was attributable to the employment. Factors and circumstances directly connected with the employment which caused or aggravated the illness, injury, allergy, or disease to the employee which made it impossible for the employee to continue in employment because of serious danger to the employee's health may be held to be an involuntary termination of employment and constitute good cause attributable to the employer. The claimant will be eligible for benefits if compelled to leave employment as a result of an injury suffered on the job.

In order to be eligible under this paragraph "b" an individual must present competent evidence showing adequate health reasons to justify termination; before quitting have informed the employer of the work-related health problem and inform the employer that the individual intends to quit unless the problem is corrected or the individual is reasonably accommodated. Reasonable accommodation includes other comparable work which is not injurious to the claimant's health and for which the claimant must remain available.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

Neither Ms. Luz nor the employer provided any medical documentation for the administrative law judge to consider in connection with the hearing. The employer representative had no

meaningful contact with Ms. Luz during her employment. The employer representative had no medical documentation available for the hearing, though the employer possesses medical documentation previously submitted to the employer or generated by the employer's nurse. Based on the limited evidence available for the hearing, the administrative law judge concludes that Ms. Luz voluntarily quit the employment due to a medical condition that was aggravated by the employment. The weight of the evidence indicates that Ms. Luz's voluntary quit was based on advice she had received from a licensed medical professional, who had advised Ms. Luz that the employment would continue to cause significant damage to her hands so long as she continued in the employment. The weight of the evidence indicates that Ms. Valedon had provided appropriate medical documentation to the employer. The weight of the evidence indicates that Ms. Valedon had sought reasonable accommodations during the employment. The employer initially provided reasonable accommodations, but subsequently discontinued the accommodations. The weight of the evidence indicates that Ms. Valedon provided the employer with sufficient notice that she would have to leave the employment if not provided with ongoing reasonable accommodations.

The administrative law judge concludes that Ms. Valedon quit the employment for good cause attributable to the employer. Accordingly, Ms. Valedon is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Valedon.

DECISION:

The Agency representative's March 5, 2009, reference 02, decision is reversed. The claimant quit the employment for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw